A **ALARM & AUTOMATION SUPPLIES (M) SDN BHD**

v.

CONTROL POINT TECHNOLOGY SDN BHD & ORS

B HIGH COURT MALAYA, KUALA LUMPUR
HANIPAH FARIKULLAH JC
[SUIT NO: D22IP-957-2008]
6 APRIL 2012

C ***COPYRIGHT:*** *Infringement - Infringement copy - Parties running same business of alarm security systems and its components - Judgment and order to make full disclosure and delivery of all information, materials documents and relevant infringing copies - Judgment and order not complied with - Whether judgment and order properly served - Whether* D *judgment and order vague and ambiguous - Whether there was breach of terms of judgment and order - Whether breach proven beyond reasonable doubt*

CIVIL PROCEDURE: *Contempt of court - Order of committal -* E *Infringement of copyright - Judgment and order to make full disclosure and delivery of all information, materials documents and relevant infringing copies - Whether judgment and order properly served - Whether judgment and order vague and ambiguous - Whether there was breach of terms of judgment and order - Whether breach proven beyond reasonable* F *doubt - Whether application for committal and writ of sequestration premature and baseless - Whether there was credible evidence to prove that respondents have knowledge or were advised of the nature or contents of the judgment and order - Liability for contempt*

G The applicant (the plaintiff) ran the business of alarm security systems and its components and was the owner of the subject copyrights. The first respondent ran a business similar to that of the applicant's where the second respondent served as the director. The court had held that the first respondent had infringed the applicant's copyright and ordered ('the judgment and H order') the first respondent to make full disclosure of all information, materials documents and the relevant infringing copies and deliver them up to the applicant and thereafter file in the court and serve on the applicant, an affidavit stating and enclosing the same. The applicant contended that the judgment and order I was personally served on the second respondent and a reminder letter was subsequently sent to the respondent advising, requesting and notifying, in full details, of what was required. However, this was completely and deliberately ignored and not complied with by the respondents. In the present application, the

applicant applied for an order for committal and writ of sequestration on the allegation that the respondents failed to comply with the judgment and order. The respondents contended that the judgment and order was not properly served personally on the respondents as the applicant's solicitors only left some unknown documents in envelopes with the second respondent. Furthermore, the judgment and order was alleged to be vague and ambiguous as it did not enclose a copy of the plaintiff's copyright. Therefore, it was submitted that the present committal application was premature and baseless and was wrong in law as there was no credible evidence to prove that the respondents had knowledge or were advised of the nature or contents of the judgment and order, prior to or at the material time when the application was filed. The second respondent further argued that she was not liable for contempt as she was a sleeping director of the first respondent.

Held (allowing application; ordering fine and sequestration of assests):

(1) The applicant had proven beyond reasonable doubt that the second respondent had breached the terms of the judgment and order and was in contempt of the court order and judgment. As against the first respondent, the contempt was absolutely clear. Since the first respondent was a company and could not be imprisoned, a heavy fine and a sequestration of its assets would be the appropriate sanction. The sequestration would last until the contempt was fully purged. (paras 30 & 31)

(2) The second respondent had been personally served with the judgment and order. The personal service of the court judgment and order had been completed and done and the second respondent had accepted and received them. This was evidenced by the exhibits tendered in court. (paras 21 & 22)

(3) The second respondent's contention that the judgment was vague and ambiguous could not be accepted. The court had clearly in its judgment and order, ordered the respondents to deliver up, make full discovery and filed in court and serve an affidavit containing all information, documents, materials and items connected to the infringing copies. The applicant, in turn, had even specified in its reminder letter of what was required, yet the respondents ignored those requests. Such action of the respondents tantamounted to a clear breach of the judgment and order. (paras 23, 24 & 25)

(4) The second respondent cannot simply claim that she was just a housewife and have a family and therefore be permitted to disobey the judgment and order. The second respondent had been the director of the first respondent for the last thirteen years and cannot wash her hands now from the contempt. (para 29)

(5) The first respondent had undertaken to furnish the documents requested latest by 19 February 2012. In any case, for her failure to comply with the order, the court would impose a daily fine of RM5,000 until the order is complied with. (paras 32-33)

Case(s) referred to:

Fortune Pacific Engineering Co Ltd v. Gajatakraw Industries Sdn Bhd [2010] 5 CLJ 590 HC ***(refd)***

Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia v. Md Jaafar Abdul Carrim & Anor [1998] 1 CLJ (Supp) 454 HC ***(refd)***

MBf Holdings Bhd & Anor v. Houng Hai Kong & 2 Ors [1993] 3 CLJ 373 HC ***(refd)***

Nor Aslan Abd Hamid & Ors v. Abdul Jalil Abdul Hamid & Ors; Muhammad Fauzi Shamsuddin & Ors (Interveners) [2006] 8 CLJ 296 HC ***(refd)***

Tam Lye Chian v. Seah Heng Lye [1999] 8 CLJ 614 HC ***(refd)***

William Jacks & Co (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor [1994] 3 CLJ 125 HC ***(refd)***

For the plaintiff - PC Kok (HK Ong with him); M/s PC Kok & Co
For the respondents - CW Beh; M/s Beh & Co

Reported by Najib Tamby

JUDGMENT

Hanipah Farikullah JC:

[1] Enclosure (61) is the plaintiff's application for an order for committal and writ of sequestration relating to the allegation that the first respondent has failed to comply with cls. 2 and 3 of the judgment of this court after full trial dated 18 July 2011.

[2] The applicant is the plaintiff company (Alarm & Automation Supplies (M) Sdn Bhd) in the present suit. The plaintiff is in the business of alarm security systems and its components. The plaintiff/applicant is the owner of the subject copyrights.

[3] The first respondent contemnor is the first defendant company (Control Point Technology Sdn Bhd) in the present suit. Likewise, it is a trader of alarm security products and its components. The second defendant Ong Boon Hee, who is not a respondent and who is not a party to the present proceedings as he has resigned from the first respondent company in July 2011.

[4] The second respondent contemnor (Sam Kok Yin) is the director of the first respondent company and Sam Kok Yin has been the first and longest-serving director of the first respondent company. Sam Kok Yin has been a director of the first respondent company since 1 June 1999 until todate for 13 years.

Background Facts

[5] A full trial of the subject suit was held on the 6, 7, 8 and 14 October 2010 before Justice Dato' Azahar bin Mohamed. On the 18 July 2011, the court held that the first respondent/defendant company had infringed the plaintiff's copyright 1, 2 and 3 and duly granted the orders prayed for by the plaintiff in its statement of claim.

[6] The court's judgement and order dated 18 July 2011 *inter alia* ordered the respondent company to make full disclosure of all information, materials, documents and the relevant defendant's infringing copies; and to deliver-up the said information and items to the plaintiff and thereafter filed in court and served on the plaintiff an affidavit stating and enclosing the same.

[7] The plaintiff contended that this court's judgement and order dated 18 July 2011 was personally served on the second respondent (Sam Kok Yin) on 28 August 2011 and on the first respondent company at its address of service (Messrs Beh & Co) on 5 September 2011.

[8] In this regard, both this court's order and judgement dated 18 July 2011 contained the required penal notice notifying the respondents or the persons so served with the same that committal proceedings will/can be commenced for purposes of compelling the first respondent company to comply with the said order and judgement.

[9] After the court's judgement and order dated 18 July 2011 on the respective respondent contemnors, the plaintiff had sent a reminder letter dated 12 September 2011 advising, requesting and notifying the respondent, in full details, on what is required to be fully discovered, deliver up and filed/served an affidavit exhibiting

A the same but this was completely and deliberately ignored and not complied with by the respondents. The said letter also advised the respondent, who has not complied to date, to comply with the court order and judgement dated 18 July 2011 by 14 September 2011.

B

[10] The respondents replied on 22 September 2011 stating that the plaintiff's request for compliance is completely baseless and absurd.

C **[11]** In summary, the respondents said in its reply that the information and document requested has been taken during the execution of the Anton Piller Order dated 13 August 2008 (about three years ago).

[12] This court has granted leave to the applicant on D 29 November 2011 to initiate this contempt proceedings.

[13] In this regard, the court *inter alia* ordered as follows:

> (a) Satu Perintah bahawa Defendan/Responden Pertama hendaklah dalam masa 7 hari dari tarikh Perintah atau E Penghakiman ini menghantar serah kepada Plaintif atau wakil yang dilantik oleh Plaintif, semua maklumat, bahan, dokumen dan barangan atau artikel yang mempunyai hubungan atau yang berkaitan dengan Salinan Langgaran Defendan atau apa-apa salinan hakcipta-hakcipta Plaintif termasuk Hakcipta F Plaintif 1, 2 dan 3 sama ada secara keseluruhannya atau mana-mana bahagian atau sebahagian besar atau substantial hakcipta-hakcipta Plaintif termasuk Hakcipta Plaintif 1, 2 dan 3;

G (Term 2 or "Terma 2" of Penghakiman and Perintah dated 18 July 2011)

> (b) Satu Perintah bahawa Defendan/Responden Pertama hendaklah dalam masa 7 hari dari tarikh Perintah atau Penghakiman menzahirkan secara penuhnya semua maklumat, bahan, dokumen dan barangan atau artikel yang mempunyai H hubungan atau yang berkaitan dengan Salinan Langgaran Defendan atau apa-apa salinan hakcipta-hakcipta Plaintif termasuk Hakcipta Plaintif 1, 2 dan 3 sama ada secara keseluruhannya atau mana-mana bahagian atau sebahagian besar atau substantial hakcipta-hakcipta Plaintif termasuk Hakcipta Plaintif 1, 2 dan 3 dan memfailkan suatu Afidavit I yang menyatakan serta mengeksibitkan maklumat, bahan, dokumen, barangan dan artikel sedemikian di Mahkamah dan menyampaikan sesalinannya kepada peguamcara Plaintif.

(Term 3 of the Penghakiman and Perintah dated 18 July 2011)

[14] In gist, term 2 of the Judgement & Order dated 18 July 2011 requires the first respondent company to deliver-up and term 3 of the same requires the first respondent company to make full disclosure, file and serve its affidavit stating and exhibiting all the information, documents, items and materials required. So, the respondent is required to take three actions, namely:

(i) to deliver-up;

(ii) to make full discovery; and

(iii) to file and serve its compliance affidavit.

The Law On Contempt

[15] The juridical basis of the law of contempt is as stated in the case of *MBf Holdings Bhd & Anor v. Houng Hai Kong & 2 Ors* [1993] 3 CLJ 373 at 378, as follows:

> It is paramount in the public interest that every court should have the power and authority or jurisdiction to punish persons who scandalise it or disobeys orders made by it. If such power is absent, then the public will lose all confidence in the authority of the judicial arm of the state leading to anarchy and disorder.

[16] It is not disputed that in order to succeed the plaintiff has to prove that the alleged contemnor had breached the order of court and the standard of proof required is proof beyond reasonable doubt. Directors of a company who have been made aware of an injunction, are liable for its breach by the company (see *William Jacks & Co (M) Sdn Bhd v. Chemquip (M) Sdn Bhd & Anor* [1994] 3 CLJ 125; *Fortune Pacific Engineering Co Ltd v. Gajatakraw Industries Sdn Bhd* [2010] 5 CLJ 590).

[17] In *Kesatuan Pekerja-Pekerja Perusahaan Dunlop Malaysia v. Md Jaafar Abdul Carrim & Anor* [1998] 1 CLJ (Supp) 454 the court held that:

> The rules governing the application for an order of committal is provided for under O. 52 of the RHC. Authorities have shown that the procedural rules must be complied with and be strictly enforced. Lord Denning MR in *Mcllraith v. Grady* [1968] 1 QB 468 at p 477 said:
>
> > ... we must remember the fundamental principle that no man's liberty is to be taken away unless every requirement of the law has been strictly complied with ....

In *Chiltern District Council v. Keane* [1985] 2 All ER 118 at p 119, Sir John Donaldson MR said:

> ... where the liberty of the subject is involved, this court has time and time again asserted that the procedural rules applicable must be strictly complied with.

KC Vohrah J in *Sykt M Mohamed v. Mahindapal Singh & Ors* [1991] 2 MLJ 112 at p 114 said:

> ... that since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, the procedural rules applicable must be strictly enforced.

Preliminary

[18] At the outset of the proceedings, learned counsel for the respondents contended that the said judgment was never properly served personally on the respondent. In this regard, it was argued that what the applicant's solicitors did was leaving some unknown documents in envelopes with the second respondent.

[19] Thus, it was submitted by learned counsel for the respondent that there is no credible evidence to prove that the respondents have knowledge or are aware of or are advised of the nature or contents of the said judgment, prior to or at the material time when the present application was filed. Therefore the respondent argued that the present application for contempt, when it was filed on 4 November 2011 and 29 November 2011 was premature and baseless and was wrong in law.

[20] In support of its contention, learned counsel for the respondents referred to Raus Sharif's (J) (as he then was) in *Nor Aslan Abd Hamid & Ors v. Abdul Jalil Abdul Hamid & Ors; Muhammad Fauzi Shamsuddin & Ors (Interveners)* [2006] 8 CLJ 296, where it was stated that:

> it is not disputed in this case that the 28 February Order was not served personally on the Applicants. The 28 February Order was served on the Applicant's solicitors. To me such service is bad in law as the Applicants are required by Order 45 rule 7 RHC to be served personally before they could be said to have willfully disobeyed the order.

[21] Based on the affidavits evidence filed by the applicant supported by exh. ST3 and exh. "X" AP2, I am satisfied that the second respondent has been personally served with the court judgment and order dated 18 July 2011.

[22] Personal service of the court judgement and order dated 18 July 2011 has been completed and done on the second respondent, on the 28 August 2011 (see the affidavit of service of See Toh Siew Peng affirmed on 4 October 2011).

(Exhibit "R" AP1). I am satisfied that exh. "ST3" shows pictures that the second respondent (Sam Kok Yin) has accepted and received the court's judgement and order. A clearer picture (colour) of exh. "ST3" is shown in p. 2 of exh. "X" AP2.

The Application Or The Cause Papers For This Application Are Vague And Ambigious And Not In Accordance With O. 52 RHC 1980

[23] It was further contended by learned counsel for the second respondent that the said judgment and order is vague and ambiguous as it did not enclose a copy of the hakcipta plaintiff 1, 2 and 3.

[24] On this point, I cannot accept the second respondent contention. In my view, the court has clearly in its judgment and order dated 18 July 2011 ordered the respondents to deliver up, make full discovery and filed in court and served an affidavit containing all information, documents, materials and items connected to the defendants' infringing copies (infringing materials manuals, computer program/software and circuitry). The plaintiff, in turn, had specified in detail in its letter dated 12 September 2011 (exh. "S" AP1) what are these information, documents, materials and items required, namely:

4.1 Full name, identity, address, contact details and all other relevant details of the manufacturer, producer, distributor, supplier, exporter, importer, forwarding agent, seller, buyer and any person or anyone involved or connected to the Defendant's Infringing Copy;

4.2 All transaction and dealings concerning the Defendant's Infringing Copy;

4.3 The total quantity of the Defendant's Infringing Copy produced, manufactured, received, distributed, supplied, exported, purchased, sold and imported;

4.4 All communication, correspondences, purchase orders, receipts and payment documents concerning the Defendant's Infringing Copy;

A

4.5 All your client's suppliers' invoices, delivery orders, export documents, packing list, tax receipts, bill of ladings, letters of credit, custom declaration forms and any other documents concerning the Defendant's Infringing Copy;

B

4.6 All correspondences, invoices, delivery orders, receipts, quotation, debit and credit notes and any other document concerning the Defendant's Infringing Copy;

C

4.7 The Audited Accounts and Management Accounts concerning your client's stock, purchase and sale of the Defendant's Infringing Copy;

4.8 The tax payment receipts for the income earned from, sale and purchase of the Defendant's Infringing Copy by your clients;

D

4.9 All stock and inventory records (stock movement) of the Defendant's Infringing Copy including the stock balance, date of sales, invoice number, quantity, value and identity of the buyer;

E

4.10 All information and documents concerning your client's website relevant to Defendant's Infringing Copy;

4.11 A full list of all your client's customers and users of the Defendant's Infringing Copy;

F

4.12 All copies (goods and articles) of the Defendant's Infringing Copy

[25] Since the plaintiff even informed the defendant what to disclose and deliver up *vide* its solicitor's letter dated 12 September 2011 and yet the respondents ignored those requests, in my view such action of the respondents tantamount to a clear breach of the judgment and order of the court by the respondents.

G

Sleeping Director

[26] The second respondent contended that she is not liable for contempt on the ground that she is just playing a passive role and leaves everything to Ong Boon Hee (her husband and former director).

H

[27] In this present case, it is not disputed that Ong Boon Hee is no longer a director or officer in the first respondent's company as he has resigned in July 2011 and the present contempt relates to contempt that happened after July 2011 (ie, after the court's judgment and order).

I

[28] Further, it is not disputed that the second respondent has been a director (in fact a founding director) for the past 13 years of the first respondent company. As a director, she would have signed statutory accounts for the first respondent and are therefore aware of the affairs and business of the first respondent.

[29] In this regard, I agree with learned counsel for the applicant's contention that the second respondent cannot simply claim that she is just a housewife and has a family and therefore be permitted to disobey the court's judgement and order dated 18 July 2011. It is pertinent to note that the second respondent has been the director of the first respondent for the last 13 years. The second respondent now cannot wash her hands from the contempt.

Conclusion

[30] After taking into consideration the affidavits filed by the parties and the submissions of learned counsels for the applicant and the respondents in my view, the applicant has proved beyond reasonable doubt that the second respondent had breached the terms of the court judgment and order and thus I find the second respondent in contempt of the court's order and judgment dated 18 July 2011 (see *Tam Lye Chian v. Seah Heng Lye* [1999] 8 CLJ 614).

[31] As against the first respondent company, the contempt is absolutely clear. It is in contempt of court. Since the first respondent company is a company and cannot be imprisoned, a heavy fine and a sequestration of its assets (sequestration to last until the contempt is fully purged) is the right sanction to be imposed.

[32] Learned counsel for the second respondent informed the court that the second respondent has undertaken to furnish the document requested by the plaintiff *vide* letter dated 12 September 2011 latest by 19 February 2012.

[33] Thus, I make an order that failure by the second respondent to comply with such undertaking the court will impose a daily fine of RM5,000 until such order is complied with.

[34] I further order costs of RM30,000 to be payable by the respondents within 14 days from to date.